

RESOLUTION # 2009-87

A RESOLUTION OF THE TOWNSHIP OF MARLBORO REQUESTING THAT THE NEW JERSEY LEGISLATURE AND THE GOVERNOR OF THE STATE OF NEW JERSEY IMMEDIATELY SUSPEND THE REQUIREMENTS OF THE NEW JERSEY FAIR HOUSING ACT DUE TO EXTREME AND UNUSUAL ECONOMIC CIRCUMSTANCES FACING THE UNITED STATES OF AMERICA AND THE STATE OF NEW JERSEY, AND BECAUSE OF UNSOUND, POOR AND UNREASONABLE PLANNING AND DEVELOPMENT DIRECTIVES ORIGINATING FROM THE FAIR HOUSING ACT, AND BECAUSE OF THE ARBITRARY, CAPRICIOUS AND UNREASONABLE REGULATIONS PROMULGATED, ENFORCED, AND INTERPRETED BY THE COUNCIL ON AFFORDABLE HOUSING

WHEREAS, the Honorable Mayor Jonathan L. Hornik and the Marlboro Township Council (hereinafter "the Council") find that the United States of America and the State of New Jersey are both facing unprecedented economic strife which has resulted in high unemployment, plummeting real estate values, an alarming increase in home foreclosures and personal insolvency, as well as the virtual collapse and halting of residential and commercial development;

WHEREAS, Mayor Hornik and the Council find that concomitantly the State of New Jersey and municipalities such as the Township of Marlboro are facing a planning and development crisis in that overdevelopment, destruction of open space and conservation, and, the placement of undue stress upon local infrastructures such as schools and roads has become unmanageable and unworkable;

WHEREAS, Mayor Hornik and the Council find that municipal sources needed to combat an economic and planning/development crisis, namely tax dollars and assistance from federal and state governments is presently lacking or non-existent;

WHEREAS, Mayor Hornik and the Council find that the foregoing conditions require immediate and swift remedial action that only prudent government can provide;

WHEREAS, Mayor Hornik and the Council find that the foregoing conditions, if left to continue and if left unabated, will result in irreparable harm to not only the New Jersey economy but will also result in the placement of extreme and long-lasting stress upon municipal infrastructures throughout the State as well as upon the taxpayers of the State of New Jersey, the County of Monmouth, and the Township of Marlboro;

WHEREAS, Mayor Hornik and the Council similarly find that the foregoing conditions, if left to continue and if left unabated, will advance unsound and poor planning and development thus leading to greater stress and strain to an already existing and inferior infrastructure which will fail as a result;

WHEREAS, in light of the foregoing conditions Mayor Hornik and the Council see fit to request of the New Jersey Legislature and the Governor of the State of New Jersey the issuance of immediate relief which Mayor Hornik and the Council deem as just and necessary in order to avoid catastrophic consequences;

WHEREAS, Mayor Hornik and the Council find that at the heart of the economic and development crisis is the issue of affordable housing which Mayor Hornik and the Council acknowledge that every municipality in the State of New Jersey has a constitutional obligation to provide a realistic opportunity for the facilitation and fostering of same;

WHEREAS, Mayor Hornik and the Council find that beginning with the Mount Laurel I decision which was rendered by the New Jersey Supreme Court in 1975 that the Mount Laurel doctrine has been evolving and has been in flux ever since its creation;

WHEREAS, Mayor Hornik and the Council find that the history of the Mount Laurel doctrine shows that following the 1975 New Jersey Supreme Court decision, in 1983 a second Supreme Court decision was handed down which was then followed by the creation of the New Jersey Fair Housing Act (hereinafter "the Act") in 1985 and as part of the Act, the Council on Affordable Housing (hereinafter "COAH") was created;

WHEREAS, Mayor Hornik and the Council find that COAH has continually promulgated and enacted procedural and substantive rules (hereinafter "the Rules") since its inception which have attempted to implement, define, clarify, and guide municipalities in reaching the fulfillment of their Mount Laurel obligations;

WHEREAS, Mayor Hornik and the Council find that the creation of affordable housing is an important governmental objective however, the fostering of same must take into account existing economic conditions and more importantly, orderly and sound planning, as well as the ability of a municipality to

absorb and service said housing through a viable and efficient infrastructure which is capable of supporting such development;

WHEREAS, Mayor Hornik and the Council find that the Rules have not accomplished this goal and instead of defining and clarifying a municipality's means and methods of satisfying its Mount Laurel obligation and instead of allowing for orderly and reasoned planning and development, the Rules have brought about greater confusion, left the rights of all participants unsettled and indeterminate, the Rules have been applied and interpreted in an arbitrary and inconsistent manner, and the Rules have forced municipalities to plan for development in a desultory manner which will lead to irreparable harm to state, county and local infrastructure;

WHEREAS, Mayor Hornik and the Council similarly find that the Rules will not result in the effective production of affordable housing in accordance with their mandate;

WHEREAS, Mayor Hornik and the Council find that the New Jersey Appellate Division had recently voided a portion of COAH's rules since they went afoul of the Mount Laurel doctrine and this decision represents a judicial recognition as to the continued instability of the Rules;

WHEREAS, Mayor Hornik and the Council find that COAH, in reaction to the foregoing Appellate decision, rewrote the Rules (in part) and required all municipalities wishing to remain under its jurisdiction to petition by no later than December 31, 2008, despite the fact that the rewritten Rules were under intense legal challenge at the time (and they remain so today) and without taking into account the spiraling economic exigency facing the Nation and New Jersey;

WHEREAS, Mayor Hornik and the Council find that the foregoing actions of COAH were arbitrary, capricious and unreasonable and showed an utter disregard for the economic ability of municipalities to effectively plan and fund affordable housing efforts in time of economic crisis thus unjustifiably shifting the burden of subsidizing affordable housing to the taxpayers;

WHEREAS, Mayor Hornik and the Council similarly find that the foregoing actions of COAH showed an utter disregard for sound and reasoned planning thus distorting the Mount Laurel doctrine and its underpinnings;

WHEREAS, Mayor Hornik and the Council similarly find that a recent amendment to the Act, commonly known as A500, unjustifiably and unreasonably altered, modified, and eradicated the orderly and reasoned methods of creating and fostering affordable housing;

WHEREAS, Mayor Hornik and the Council find that the Act is similarly in dire need of amendment and rewrite in light of the confusing state of the law as well as the arrival of the sudden and present economic peril facing the Nation and the State of New Jersey as well as the abounding overuse and detrimental impact which has been visited upon municipal infrastructures throughout the State;

WHEREAS, Mayor Hornik and the Council find that the actions of COAH, as well as the enforcement of the Rules—in their present form—if left unchecked, will not alleviate, but rather exacerbate and accelerate, the economic and planning crisis facing virtually every municipality in New Jersey;

WHEREAS, Mayor Hornik and the Council similarly find that the actions of COAH, if left unchecked, will similarly result in unsound and poor planning which will irreparably harm the economic, environmental, and developmental infrastructure in many communities including the Township of Marlboro;

WHEREAS, Mayor Hornik and the Council find that an immediate suspension of the Rules, the Act, and COAH's ability to administer, adjudicate, and process any and all petitions for substantive certification and/or Fair Share Plans is warranted;

WHEREAS, Mayor Hornik and the Council find that without such relief immediately issuing that a perfect storm has formed between unreasonable, overreaching, unduly burdensome, archaic, and draconian regulations stemming from the Rules and the Act such that severe and permanent harm will be inflicted upon municipalities and taxpayers alike if remedial action is not taken right away;

WHEREAS, Mayor Hornik and the Council similarly find that the introduction of S-2485, which purports to impose a moratorium upon the collection of non-residential development fees, is further evidence of the Legislature's recognition that the Act and the Rules are in need of immediate and drastic

remedial action and that they are unworkable vis-à-vis the current economic climate;

WHEREAS, Mayor Hornik and the Council find that in addition to the foregoing an immediate stay on any further enforcement or implementation of the Act is necessary in order to enable and assist municipalities in weathering the present economic crisis particularly where tax revenues have substantially declined as has State financial assistance to municipalities;

WHEREAS, Mayor Hornik and the Council find that in addition to the foregoing that COAH should be abolished and that a new entity responsible for the administration of affordable housing obligations be created;

NOW, THEREFORE, BE IT RESOLVED, by the unanimous support of the Honorable Mayor Jonathan L. Hornik and the Council that the following actions be taken:

1. The Legislature and Governor are hereby requested to issue and order an immediate stay as the enforcement and/or creation of any obligations deriving or arising under the Act.
2. The Legislature and Governor are hereby requested to issue and order an immediate stay as the enforcement, interpretation and/or implementation of any of the Rules promulgated by COAH.
3. The Legislature and Governor are hereby requested to issue and order an immediate stay as the adjudication, determination, or analysis of any pending petition for substantive certification, Fair Share Plan, or other application pending before COAH.
4. That the Legislature and Governor are hereby requested to immediately create a task force which shall study and recommend the manner in which COAH can be abolished and the responsibility and oversight of affordable housing obligations be assigned to a new governing entity.
5. That immediate efforts be made to interface with delegates from each and every municipality in order to begin the process of rewriting the Act.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Hon. Mayor Jonathan L. Hornik
- b. Heyer & Gruel
- c. Kenneth W. Biedzynski, COAH Special Counsel
- d. DeCotiis, Fitzpatrick, Cole & Wisler, LLP
- e. Hon. Jon S. Corzine, Governor

OFFERED BY: CANTOR AYES: 5

SECONDED BY: LA ROCCA NAYS: 0



ALIDA MANCO,  
MUNICIPAL CLERK



STEVE ROSENTHAL,  
COUNCIL PRESIDENT

2/12/09

**CERTIFICATION**

I hereby certify the above to be a true and exact copy of a Resolution adopted by the Township Council of the Township of Marlboro at a meeting held on 2-12-2009



Township Clerk